

ORIGINAL

(S E R V E D )  
( April 26, 2001 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

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DOCKET NO. 00-12

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REVOCATION OF LICENSES, PROVISIONAL LICENSES AND ORDER TO  
DISCONTINUE OPERATIONS IN U.S. - FOREIGN TRADES FOR FAILURE TO  
COMPLY WITH THE NEW LICENSING REQUIREMENTS OF THE OCEAN  
SHIPPING REFORM ACT OF 1998

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ORDER

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This proceeding was initiated by an Order to Show Cause issued to 81 companies. The Order required the companies to show why the Commission should not revoke their ocean transportation intermediary licenses or provisional licenses, and issue a cease and desist order barring them from operating as ocean transportation intermediaries ("OTIs") in the United States foreign trades. The Commission issued the Order because it found that the OTIs had not complied with the requirements of the Shipping Act of 1984, 46 U.S.C. app. §§ 1701, et seq., as amended by the Ocean Shipping Reform Act of 1998, Pub. L. 105-258, 112 Stat. 1902 ("OSRA").

The OSRA requirements are codified at sections 8 and 19 of the Shipping Act, 46 U.S.C. app. §§ 1707 and 1718, and 46 CFR Parts 515 and 520.

The events that gave rise to this proceeding are briefly as

follows:

Effective May 1, 1999, the OTI was created as part of the OSRA reforms. The term "OTI" is defined to include both ocean freight forwarders and non-vessel-operating common carriers ("NVOCCs"). As part of the OSRA amendments, NVOCCs operating in the United States must obtain a license. They must also file proof with the Commission that they have increased their financial responsibility from \$50,000 to \$75,000 (plus \$10,000 for each unincorporated branch office) in accordance with the new regulations, and a Form FMC-1 indicating the location of their tariffs which they must publish in an electronically accessible automated tariff system.

Freight forwarders' obligations were also affected by the enactment of OSRA. Although they continue to maintain their existing licenses, they are now required to increase the amount of their financial responsibility on file from \$30,000 to \$50,000 (plus \$10,000 for each unincorporated branch office) and file proof of the increase with the Commission.

After the OSRA changes took effect, Commission staff undertook various actions to inform and advise all OTIs of the new requirements and to encourage them to comply with those requirements promptly and voluntarily. They notified all OTIs affected by the OSRA requirements of the changes on April 1999. By May 2000, approximately 200 entities remained in default of the OSRA requirements, and after the Commission's Bureau of Consumer

Complaints and Licensing ("BCCL") notified those entities that formal proceedings could be instituted against them, the majority achieved compliance. However, 81 entities did not, and on December 7, 2000, the Commission issued the Order to Show Cause, serving those entities in default through certified mail, return receipt requested.

The Order identified, in Schedule A, the freight forwarders which had not yet increased their financial responsibility under the Commission's implementing regulations; in Schedule B, the NVOCCs which had not yet applied for an OTI license, provided proof of increased financial responsibility, or filed a Form FMC-1; in Schedule C, OTIs which had failed to meet both the new freight forwarder and NVOCC requirements;<sup>1</sup> and in Schedule D, a single foreign-domiciled NVOCC which had failed to increase the amount of its financial responsibility on file from \$50,000 to \$150,000. The Order also invited persons having an interest and desire to intervene in the proceeding to file a petition for leave to intervene, but no petitions were received.

Following the issuance of the Order to Show Cause, 22 OTIs contacted the Commission and have now complied with OSRA

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<sup>1</sup>An OTI may hold a single license allowing it to operate as both a freight forwarder and an NVOCC, provided it satisfies the requirements for both types of entities.

requirements, while 4 OTIs cancelled their bonds.\* Although the 55 remaining OTIs ("Respondents") were adequately served with the Order to Show Cause, they did not file any response to the Order and are still not in compliance with OSRA.

BOE filed a memorandum of law supported by a declaration with documentary exhibits.

#### BOE'S ARGUMENTS

In its memorandum of law, BOE states that the Order to Show Cause accurately described Respondents' obligations under OSRA and the penalties attaching to noncompliance with those obligations. Further, BOE argues that the Commission was justified in demanding that Respondents show why their licenses and provisional licenses should not be revoked and they should not be ordered to cease and desist from operating as OTIs in the U.S. foreign trades. BOE contends that because Respondents had ample notice of their default status and were served with the Order to Show Cause yet failed to meet their burden under the Order, the Commission should find that Respondents do not contest that they lack the prerequisites required to be an OTI. BOE provides a number of cases as authority

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<sup>2</sup>The OTIs that have now complied with OSRA requirements are listed under Appendix 1 of this Order, while those that have cancelled their bonds are listed under Appendix 2.

for this request.<sup>3</sup>

BOE also argues that the Commission has authority to cancel tariffs or apply other summary measures to address noncompliance with statutory mandates by regulated parties, and that failure to follow through with the requested sanctions would permit Respondents to operate in violation of the Shipping Act.

BOE also points out that the Commission has concluded in similar situations that important public policy warrants prompt action to cancel public tariffs and to prevent entities from improperly or unlawfully holding themselves out as providing services in the transportation industry. BOE further argues that such justifications apply with even greater force where, as here, the entities' failure to comply with the statute places the shipping public at financial risk.

Finally, BOE requests that the Commission authorize BCCL to issue new licenses to the OTIs that have complied with the new requirements.

#### DISCUSSION

Respondents have not participated in this proceeding although

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<sup>3</sup>BOE cites to Capitol Transportation Inc. v. United States, 612 F.2d 1312, 1317-1319 (1st Cir. 1979); Adair v. Penn-Nordic Lines, 26 S.R.R 11, 15 (I.D., 1991); Alabama Power Co. v. FPC, 511 F.2d 383, 391 (D.C. Cir. 1974); and, Commonwealth of Puerto Rico v. FMC, 468 F.2d 872, 880 (D.C. Cir. 1972) (all holding that a party in a formal proceeding with information relevant to that proceeding must provide the information or be penalized for failure to do so).

they received adequate notice of the Order to Show Cause and the schedules established under the Order, nor have they made any effort to contest the determination that they have not complied with the OSRA requirements. In keeping with precedence, therefore,<sup>4</sup> the Commission finds that Respondents did not meet their burden under the Order to Show Cause. Consequently, the Commission hereby revokes Respondents' licenses or provisional licenses and orders Respondents to cease and desist from operating as OTIs in the foreign trades of the United States.

Section 8 of the Shipping Act mandates that all common carriers make their tariffs publicly available in an electronically accessible automated tariff system. Also, all entities are forbidden to act as OTIs in the U.S. under section 19 of the Shipping Act, unless they obtain a Commission-issued license. All must provide a bond, proof of insurance or other surety in a form and amount determined by the Commission to ensure financial responsibility. Under the Commission's regulations implementing these provisions, all freight forwarders must file proof that they have increased their financial responsibility, from \$30,000 to \$50,000 (plus \$10,000 for each unincorporated branch office), and NVOCCs must file proof that they have increased their financial

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<sup>4</sup>See, e.g., Adair v. Penn-Nordic Lines, supra, (stating that a party with control over information that would resolve a disputed issue may be required to produce it or suffer an unfavorable inference for failure to do so).

responsibility from \$50,000 to \$75,000 (plus \$10,000 for each unincorporated branch office).

The documents and declarations submitted by BOE establish that Respondents have not complied with the above requirements despite repeated warnings and encouragement from Commission staff to do so. Respondents had adequate notice of their obligations and the opportunity to fulfill those obligations. In light of these factors, it is appropriate for the Commission to impose the enumerated sanctions based on section 19(c) of the Shipping Act, which states:

The Commission shall, after notice and hearing, suspend or revoke a license if it finds that the ocean transportation intermediary is not qualified to render intermediary services or that it willfully failed to comply with a provision of this Act or with a lawful order, rule, or regulation of the Commission. The Commission may also revoke an intermediary's license for failure to maintain a bond, proof of insurance, or other surety in accordance with [the Act].

It is also important that the Commission impose sanctions to avoid potential financial harm to members of the shipping public who deal with Respondents. Since Respondents have not filed proof of adequate financial responsibility, it is possible that there may not be funds available to compensate those entities in the event they suffer financial injury as a result of their business dealings with Respondents. Moreover, failure to prevent Respondents from holding themselves out as OTIs would allow them to operate their businesses in direct contravention of the Shipping Act. The

Commission therefore cautions Respondents that if they continue to do business in the United States without first obtaining the proper OTI licenses they will be in violation of this Order and subject to penalties under section 13 of the Shipping Act.

THEREFORE, IT IS ORDERED, That the licenses or provisional licenses of the entities listed in Schedules A, B, and C of this Order are revoked for failure to comply with section 19 of the Shipping Act of 1984, as amended, and 46 CFR Part 515;

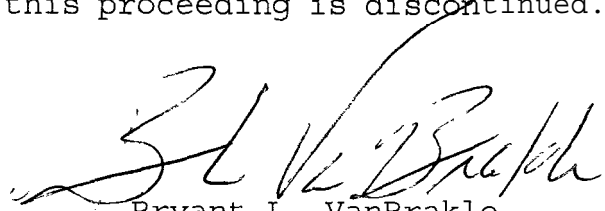
IT IS FURTHER ORDERED, That the entities listed in Schedules A, B, C, and D of this Order cease and desist from operating as ocean transportation intermediaries, including publication of any tariff in the foreign trade of the United States, for failure to comply with sections 8 and/or 19 of the Shipping Act of 1984, as amended, and 46 CFR Parts 515 and 520;

IT IS FURTHER ORDERED, That the Bureau of Consumer Complaints and Licensing issue new licenses to the ocean transportation intermediaries that have complied with the statutory requirements;

IT IS FURTHER ORDERED, That this Order be served upon Respondents;

FINALLY, IT IS ORDERED, That this proceeding is discontinued.

By the Commission



Bryant L. VanBrakle  
Secretary



**SCHEDULE A**

Agency International Forwarding, Inc.

Air & Sea Inc.

Almcorp Project Transport, Inc.

Auto Overseas Ltd.

Chin, Johnnie C. F. d/b/a J C Express

Excel Shipping Corp.

Federal Warehouse Company

Frontier International Forwarders, Inc.

Hopkins, James E. d/b/a Hopkins Services

International Trade and Logistics, Inc.

Maurice Pincoffs Company, Inc.

P. H. Petry, Company, Inc.

S. h. r. Enterprises, Inc.

s. t. s. International, Inc.

Treset Corporation

**SCHEDULE B**

A. I. F. Services, Inc. d/b/a Agency International Forwarding, Inc.

Airlift Container Lines, Inc.

Albatross Shipping Inc.

Andreani Corporation

Auto Export Services North America, Inc.

Blackbird Line, Inc.

Calico Equipment Corp. d/b/a Global Equipment Transport  
Cargo Maritime Services, Inc.

Century Express, Inc.

Continental Shipping & Trading Import-Export, Inc.

Continental Van Lines, Inc. d/b/a Continental International  
Denali International, Inc.

Dukes System Corp.

Exploit Express Freight Inc.

Feith, Cornelis J. d/b/a Tiger Express

Formerica Consolidation Service, Inc.

Hemisphere International Shipping, Inc.

Inter-American Freight Consolidators, Inc.

International Distribution, Inc.

International Transport Agency d/b/a I.T.A.

Iris Enterprises Corp. d/b/a Iris Cargo

Johnson Storage & Moving Co.

Landstar Ranger, Inc.

Loa Int'l (USA) Transport Co. Inc.

Nador Shipping Corporation

Naviera Mundial Inc.

Ocean Pacific Lines, Inc.

Og International (USA) Co., Inc.

Roberto Bucci (USA) Inc.

Rolines Shipping Corp.

Sanchez, Carlos B. d/b/a R & S Trading

Seamax, Inc.

Transbridge International, Inc.

Transneftegazstroy America, Inc.

World Marine Services Dominicana, LLC

World Wide Cargo Logistics, Inc.

Yellow Freight System, Inc.

**SCHEDULE C**

Alrod International, Inc. d/b/a Alrod Ocean Company

Poseidon Freight Forwarders, Inc. d/b/a Poseidon Line

**SCHEDULE D**

Unitrans Shipping & Air Cargo Limited

**APPENDIX 1**

Advante Customs Broker and Freight Forwarders Inc.

Allied International N.A., Inc.

C & F Worldwide Agency Corp.

Cargo Transport, Inc.

Centra Worldwide Inc dba Cwi Container Line

Con-Way Intermodal, Inc.

Deugro Ocean Transport, Inc.

Intermare Agency Services, Inc.

J.C. Express of Miami, Corp.

Millenium Logistics Services, Inc.

Oceanic Freights, Inc.

Pagoda Container Line Corp.

Professional Cargo Services Int'l Inc.

Sea Expo Freight Services, Inc.

Seajet Express Container Line Ltd. dba Gateway Container Line

Sunmar Shipping, Inc. dba Sunmar Alaska Service

Taiun Company (U.S.A.) Inc.

Time Definite Services, Inc.

Trans-Alliance Int'l Fwdg. Co. dba Nova Ocean Line

Transpo Service, Ltd.

Universe Freight Brokers, Inc. dba Seacarriers

Victory Van Corporation dba Victory Van International

## APPENDIX 2

Bulkmatic Transport Company

Gulf South Forest Products, Inc.

Manna Freight Systems, Inc.

Sea-Land Logistics, Inc.